National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

March 29, 1990

Robert H. Miller, Regional Director, Region 20; Harold J. Datz, Associate General Counsel, Division of Advice

United Brotherhood of Carpenters and Joiners of America, Local 745, AFL-CIO (S.C. Pacific) Case 37-CE-18

584-1250-5000, 584-2577, 584-2583-3300, 850-6001, 850-6049-1225, 850-6084-9000

This Section 8(e) case was submitted for advice as to whether the Union "entered into" an unlawful agreement by virtue of the issuance of an arbitration award, in light of the Board's decision in International Longshoremen's and Warehousemen's Local 13, et al. (The Careau Group d/b/a Egg City), 295 NLRB No. 74 (June 15, 1989).

FACTS

S.C. Pacific ("S.C.") is a general contractor engaged in performing construction work, and all of its stock is owned by S. Group, Inc. ("S. Group"). S.C.'s president, Norman Sakamoto, owns 25 percent of S. Group stock. Gerald Sakamoto is president of S&M Sakamoto ("S&M"), which is wholly owned by S. Group. No officers of S.C. are officers of S&M.

The Region has concluded that S.C. is a distinct and separate entity from S&M. They pay separate taxes, have separate addresses and bank accounts, and are located at different locations on the Island of Oahu. While several top management officials of S.C. used to work for S&M, all of them resigned from S&M before joining the management of S.C.

S.C. is not signatory to any collective-bargaining agreement, and its labor relations are directly controlled by Norman Sakamoto. On the other hand, S&M is a member of the General Contractors Labor Association ("GCLA") and is signatory to the master agreement with the Carpenters Union, Local 745 ("Union"). S&M's payrolls are completely separate from those of S.C. There is no sharing of equipment, no mutual subcontracting and no joint bidding for work. All supervision is separate, and there is no interchange of employees or work.

On July 26, 1989,1 the Union sent a questionnaire to S&M regarding the relationship between S&M and S.C. In its cover letter, the Union claimed that S&M violated the master agreement by operating S.C. as a nonunion entity. S&M filled out the questionnaire and returned it to the Union. On September 29, the Union filed a grievance against S&M under Section 22(C)(1)(a) of the master agreement,2 alleging that "the employer is in violation of the agreement by its use of S.C. Pacific Corp as a double-breasted operation." In the grievance, the Union sought a remedy of having S&M "cease the contract violation and make the Union/employees whole for any losses sustained therefrom."

On October 12, the Industry Joint Board met to consider the Union's grievance and, on October 13, issued an "arbitration award" upholding that grievance against S&M.3 On October 25, S&M requested a federal district court to set aside the award. On November 16, the Union filed a motion to vacate S&M's district court complaint; the Union apparently has not formally requested that the court enforce the arbitration award.

ACTION

We conclude that by securing the October 13 arbitration award, the Union "entered into" an agreement in violation of Section 8(e).

The Region has found, and no party herein disputes, that Section 22(C)(1)(a) of the contract to which S&M and the Union are signatory is lawful on its face. However, the Region has also found that the interpretation of that clause in the arbitration award was a violation of Section 8(e). Thus, the award construed Section 22(C)(1)(a) to apply the contract between S&M and the Union to S.C., although the evidence clearly establishes that S.C. is neither an alter ego of nor a single employer with S&M. At

most, there is a common ownership interest in both entities by S. Group, and S.C.'s president owns 25 percent of S. Group's stock. Regulation of S.C.'s labor relations under the arbitral construction of Section 22(C)(1)(a) therefore has a "cease doing business with" objective rather than a lawful work preservation goal. See, e.g., Sheet Metal Workers Local Union 91 (Schebler Company), 294 NLRB No. 61 (1989). And, when an arbitrator gives an unlawful 8(e) interpretation to a facially valid clause in a contract, that final and binding arbitration award constitutes a bilateral reaffirmation and an "entering into" of an 8(e) agreement. 4

The Board's recent decision in Egg City, supra, does not require a different result. In Egg City, the Board found that an arbitration award did not violate Section 8(e) because it did not constitute entering into an agreement as required by 8(e). The Board reasoned that the contract was not only valid on its face, it was also "not amenable to an unlawful interpretation, despite the arbitrator's award." The parties had drafted a collective-bargaining agreement that clearly avoided any suggestion that hot cargo or other secondary picket lines would be protected.5 Unlike the situation in Egg City, the parties in this case did not clearly avoid a secondary interpretation of their provision. There is nothing in Section 22(C)(1)(a) which precludes it from being applied in circumstances where two entities do not constitute alter egos or a single employer and, consequently, where the Union is not preserving work. In the absence of such clear contractual language, we conclude that Section 22(C)(1)(a) was amenable to the unlawful interpretation which the arbitration board gave it and, accordingly, the parties entered into an unlawful 8(e) agreement by the arbitration award.

[FOIA EXEMPTIONS 2 & 5

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Consistent with the foregoing analysis, a Section 8(e) complaint should issue, absent settlement.

H.J.D.

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1 All dates hereafter are in 1989 unless otherwise specified.

2 That contract section states: Grievances subject to expedited hearing (a) a complaint filed by the Union alleging a violation of Section 7 (no strike or lock-out), Section 26.C. (referral and hiring procedure) or a contract illegally using an alter-ego operation to escape the obligations of this collective-bargaining agreement.

3 This award apparently is "final and binding" within the meaning of the contract, since the Industry Joint Board was not deadlocked.

4 See, e.g., Los Angeles County District Council of Carpenters (Coast Construction Co.), 242 NLRB 80l, 804 (1979); Retail Clerks Union Local 770 (Hughes Markets, Inc.), 218 NLRB 680, n. 11 (1975).

5 In Egg City, the contract clause at issue expressly stated that "hot cargo picket lines, secondary boycott picket line. . . are not legitimate and bona fide picket lines within the meaning of this Agreement." The contract also explicitly stated that it would not allow its provisions to be interpreted as a "hot cargo" agreement.